



Draft Presentation Pending Issuance of Final Guidance Document

Parental Consent Questions & Answers

NH Department of Health and Human Services
Medicaid to Schools



Please Note

- This presentation was made to the Medicaid To Schools Stakeholder group on Tuesday, April 13, 2021. The materials in this document have not yet been updated to reflect the comments and feedback from that meeting.
- These materials will be updated shortly. In the interim, please find this draft document.



Overview

- On Friday, February 21, 2020, He-W 589, the new Medicaid to School rule, went into effect. This bulletin is being issued to provide information regarding the changes to the Medicaid to Schools Program and provide clarification to explain these changes.
- Previous informational bulletins are posted on the DHHS website at <https://www.dhhs.nh.gov/ombp/medicaid/mts/index.htm> under the Communication and Guidance link.



**Please describe the requirements
for parental consent as it
pertains to Medicaid billing**



- Pursuant to 34 CFR §300.154, a school district must obtain written parental consent, after providing notification to the child's parent, prior to accessing a child's or parent's public benefits or insurance for the first time.
- Implied consent under these regulations is not permissible.
- The school's written notification to the parent must meet the requirements of 34 CFR §300.503(c).
- The school must send annual notifications to the parent that meet the requirements of 34 CFR §300.503(c) thereafter.



- The regulations do not specify when subsequent annual written notification must be provided.
- The written notification must include:
 - A statement of the parental consent provisions in 34 CFR §300.154(d)(2)(iv)(A)–(B);
 - A statement of the "no cost" provisions in 34 CFR §300.154(d)(2)(i)–(iii);
 - A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the school at any time; and
 - A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the school does not relieve the school of its responsibility to ensure that all required services are provided at no cost to the parents.



- The parental consent provisions in 34 CFR §300.154(d)(2)(iv)(A)–(B) states:
(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that –
 - (A)** Meets the requirements of §99.30 of this title and §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and
 - (B)** Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.



- The no cost provisions in 34 CFR §300.154(d)(2)(i)–(iii) states:
 - (2)** With regard to services required to provide FAPE [Free Appropriate Public Education] to an eligible child under this part, the public agency -
 - (i)** May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;
 - (ii)** May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;
 - (iii)** May not use a child's benefits under a public benefits or insurance program if that use would -
 - (A)** Decrease available lifetime coverage or any other insured benefit;
 - (B)** Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - (C)** Increase premiums or lead to the discontinuation of benefits or insurance; or
 - (D)** Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.



- The initial notification and consent and the subsequent annual notifications must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (34 CFR §300.9(a) (consent); 34 CFR §300.503(c) (notifications))
- The notification also must be provided before parental consent is obtained (34 CFR §300.154(d)(2)(iv)).



- If a parent denies consent, the school district may not seek access to this funding stream.
- Under the rule, (§300.154(d)(2)(iv)), the school district may make reasonable requests to obtain consent from a parent who has previously declined consent to disclose personally identifiable information to the state's public benefit or insurance program (e.g., Medicaid) for billing purposes under part 300.
- Again, prior to seeking consent, the school district must provide the parent with written notification consistent with the rule.



- If a child who has an IEP in effect in a previous school district transfers to a school in a new district in the same school year, whether or not within the same state, that new school district must obtain a new parental consent (§300.154(d)(2)(iv)(A)–(B)) before it can access the child's or parent's public benefits or insurance.
- In order to bill a service to Medicaid, parental consent must be obtained prior to the billing of services and must be within NH Medicaid's timely filing for those services. Currently, timely filing is 12 months following the earliest date of service on the claim.



- This new parental consent enables the new school district to release the child's personally identifiable information for billing purposes to the public benefits or insurance program (e.g., Medicaid).
- Consistent with 34 CFR §300.154(d)(2)(iv)(B), the consent also must specify that the parent understands and agrees that the new school district may access the child's or parent's public benefits or insurance to pay for services under part 300.



- If a child transfers to a different school in the same district and the public agency has already obtained consent prior to the disclosure of personally identifiable information for billing purposes, the school district is not required to obtain new consent under 34 CFR §300.154(d)(2)(iv).



- A school district may accept digital or electronic signatures in obtaining the parental consent required under 34 CFR 99.30 and §300.622 as described in 34 CFR §300.154(d)(2)(iv)(A). Under 34 CFR §99.30 (a), the consent must be signed and dated and an electronic form must:
 - identify and authenticate the person as the source of the consent; and
 - indicate the person's approval of the information contained in the consent.



Questions?